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August 24, 2000

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Ex Parte: Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98

Dear Ms. Salas,

BellSouth Corporation, SBC Communications, Inc. and Verizon Communications jointly submit this written *ex parte* presentation in the above-referenced proceedings. A key goal of these proceedings is to develop rules and policies to ensure that tenants in multi-tenant buildings and campuses have a full choice of competitive providers and services. The best way to ensure that choice with least disruption to existing services is (1) to require service providers to afford access by competitors to spare capacity in the wiring within a building that they own or control, where technically and operationally feasible, and (2) to find that it is presumptively unreasonable for those providers to sign exclusive agreements for access to such wiring and to sign exclusive contracts that prohibit other providers from installing wiring. In addition, the Commission should encourage building owners and managers to ensure that the wiring, pathways and spaces within their buildings and campuses can accommodate their tenants' demand for multiple providers and services. Establishing the regulated service demarcation point at the Minimum Point Of Entry ("MPOE") of the building or campus, as some parties have proposed (*See* NPRM, ¶ 67.[1]) will not achieve the Commission's goal of customer choice and will lead to major disruption to end users' services.

Existing rules afford CLECs access to ILEC-controlled wiring. In the *UNE Remand* order, the Commission expanded the definition of the sub-loop element to include all loop plant owned by the incumbent LEC on end-user premises. As a result, ILECs are required to permit CLECs to access the subloop at any technically feasible point. Even in the event that that ILEC has not established a demarcation point at the MPOE, it is still required to provide access to its

[1] The Coalition assumes that these proposals are only prospective. Any attempt to force ILECs to abandon their billions of dollars of embedded investment would represent an unlawful taking of their property and would be so disruptive to existing customers and services that it cannot reasonably be given serious consideration.

subloop facilities.[2] Thus, any change in the rules governing the location of the demarcation point will not result in CLECs having any greater access to intra-building facilities than what is provided for under the current rules.

However, access to carrier-owned intra-building wiring should not be limited to ILEC-controlled wiring alone. If a CLEC owns or controls that wiring and refuses access to other carriers, tenants will be deprived of the benefits of competition from other CLECs and from the ILEC. Therefore, the Commission should make clear that CLECs and ILECs alike have an obligation to provide non-discriminatory access to in-building wiring that they own or control.[3] To do otherwise would only frustrate the ability of subscribers to select the telecommunications provider of their choice. Existing regulations relative to ILEC unbundling should serve at least as a model for access to CLEC wiring.

Changing the demarcation rules could restrict access to in-building wiring. ALTS recently showed that mandating the demarcation point at MPOE is not the answer to providing competitive access to in-building wiring and may even "worsen the plight of CLECs" to obtain such access.[4] CLEC access to end users via ILEC-owned subloops is available now under the Commission's unbundling rules.[5] Those rules would not apply if the ILECs no longer owned or controlled the in-building wiring. The end result may be reduced end-user access to competitive services and increased costs to resellers for access to in-building facilities. There is simply no evidence that shifting the ownership and control of wiring will result in more economic or efficient CLEC access to end users.

A policy that forces LECs to place the demarcation point for all services at the MPOE is fraught with significant legal, financial, and service provisioning consequences. A mandatory MPOE rule could result in chaotic service provisioning and reduction of service quality to customers, particularly for high-capacity telecommunications services. Indeed, the Commission recognized in two previous proceedings (CC Docket No. 81-216 and CC Docket No. 88-57) that mandating MPOE demarcation is bad policy. Depending on the type of the service needed, many customers find that the only way to ensure quality service is to locate the demarcation point at their premises.

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[2] In addition, both Verizon and SBC, which together serve the majority of access lines in the country, have voluntarily agreed as part of the recent merger conditions to establish single points of interconnection in multi-unit properties, where the building owner agrees to take responsibility for the wiring beyond that point, in order to afford competing carriers access to in-building wiring.

[3] There should be no question that the Commission has authority to regulate the actions of CLECs in this regard. CLECs, as telecommunications carriers, are subject to sections 201(b) of the Act, which proscribes unreasonable practices, and 202(a), which prohibits unreasonable discrimination, by *any* carrier.

[4] *Ex Parte* Letter dated August 4, 2000, from Gunner D. Halley, Counsel for Association for Local Telecommunications Services at 1.

[5] Some states have adopted tariffs for CLEC access to ILECs' in-building wiring.

This is particularly true for high-capacity telecommunications services, such as DSL. For example, broadband and data services provided over fiber-in-the-loop technology require placement of equipment in common locations in the building or, for security or network reliability reasons, on or near the end user's premises, which may be located far beyond the MPOE of the building. In most such cases, single mode fiber must be installed directly to the end user's premises. Involving multiple providers in such services would cause such interoperability and compatibility problems between the carrier's central office equipment or remote switch and the owner's on-premises multiplexers, that it would render such an arrangement technically infeasible. At best, it would potentially degrade service to the point of making them useless for high-capacity communications, with no single point of responsibility to which the customer could turn.[6]

The evolution of network technologies is clearly moving in the direction of fiber to the end user, with direct, unbroken transmission channels to the end user's premises. While some building owners have the resources and expertise to extend high capacity broadband services with no reduction in quality, many are not set up to provide such services. The result of forcing MPOE on all property owners for all services could seriously impede the provisioning, quality, and cost of new technology. As a result, this policy could deprive end users of access to new broadband services, such as DSL, in contravention of the requirements of section 706 of the 1996 Act.

Access to in-building wiring can be accomplished without disruptive changes in the demarcation rules. The Commission can meet its policy goals of providing for competitive access to wiring within multi-tenant buildings and campuses with minimal disruption in the following manner:

1. ***Require all service providers to provide access to in-building wiring they own or control.*** The Commission has already ordered unbundling of ILEC networks. To the extent that CLECs need and desire access to embedded ILEC facilities at MTE properties, they are able to do so under current rules. To ensure that customers are not deprived of access to services of all local carriers, the Commission should find that it is an unreasonable and discriminatory practice under sections 201(b) and 202(a) for *any* telecommunications provider to deny access to spare capacity in in-building wiring they own or control, where technically and operationally feasible. It should also find that it is a presumptively unreasonable practice for any telecommunications provider to enter into a contract that limits competitors' access to such wiring.

2. ***Retain the existing Part 68 demarcation point rule***. The flexibility provided by the existing rule is necessary to accommodate diverse technology deployments of carriers as well as the diverse needs of end users, state regulators, property owners, resellers and facilities-based CLECs. Moving the demarcation point may impede the Commission's policy goals. Thus, there is no need to adopt a mandatory MPOE rule.

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[6] The Commission must keep in mind that Section 256(a)(2) of the 1996 Act imposes upon the agency the duty "to ensure the ability of end users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks." 47 U.S.C. § 256(a)(2).

3. ***Allow time for market forces to work.*** Property owners are becoming more involved with telecommunications. Those who are willing and capable of managing wire and telecom equipment on their properties are doing so. Hundreds of property owners filed comments in the *Competitive Networks* proceeding objecting to forced MPOE and supporting retention of the existing demarcation point rule.[7] They have shown that forcing MPOE on unwilling property owners will negatively impact the ability of end users to access telecommunications services.[8]

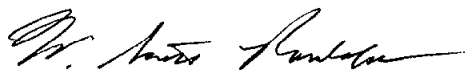
4. ***Encourage property owners to plan for access by multiple carriers***. Property owners can minimize building access problems without Commission intervention through effective infrastructure design, planning, and installation. Therefore, the Commission should encourage owners to utilize industry standards, methods, and procedures providing for competitive access.

Adoption of these policies will allow the Commission to meet its policy goals in a way that will not disrupt the existing marketplace for telecommunications services. In particular, it will prevent the potentially deleterious effect of alternative policies on the provision of broadband services to customers in multi-tenant buildings.

Pursuant to Section 1.1206(a)(1) of the Commission's rules, and original and one copy of this letter are being submitted to the Office of the Secretary. Please associate this notification with the record in the proceedings indicated above.

If you have any questions regarding this matter, please call me at (202) 463-5293.

Sincerely,



W. Scott Randolph
Director - Regulatory Matters

cc: Jeffrey Steinberg, WTB
Leon Jackler, WTB
Joel Taubenblatt, WTB
Kathy Farroba, CCB

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[7] The intent of the Telecommunications Act of 1996 Act ("1996 Act") was to establish a "pro-competitive, deregulatory national policy framework." Joint Managers' Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 113, at 1 (1996). Imposing a mandatory MPOE rule will undermine that purpose. Rather than promulgating additional, unnecessary regulation, the Commission should allow the existing rules and market forces to work to bring new and competitive services to end users.

[8] Under the existing rule, in those instances where the carrier has not adopted a uniform MPOE policy, property owners have control over where the demarcation point is placed.